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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR 5564

DATE COMPLAINT FILED: 10/12/04

DATE OF NOTIFICATION: 10/19/04

LAST RESPONSE RECEIVED: 12/09/04

DATE ACTIVATED: 5/10/05

EXPIRATION OF SOL: 04/01/09

DATE COMPLAINT FILED: 10/20/04

DATE OF NOTIFICATION: 10/27/04

LAST RESPONSE RECEIVED: 12/09/04

DATE ACTIVATED: 5/10/05

EXPIRATION OF SOL: 10/12/09

COMPLAINANTS:

Wiley Brooks (MUR 5564)
Timothy A. McKeever (MUR 5575)

RESPONDENTS:

Tony Knowles for U.S. Senate and
Leslie Riddle, in her official capacity as treasurer
(MURs 5564, 5575)
Alaska Democratic Party and
Marge Kaiser, in her official capacity as treasurer¹
(MURs 5564, 5575)
Democratic Senatorial Campaign Committee and
J.B. Poersch, in his official capacity as treasurer²
(MUR 5564)

¹ Joelle Hall, who was named as treasurer in the complaint, served as treasurer of this committee during the time of the activity in question.

² David Rudd served as treasurer of this committee during the time of the activity in question.

1 **RELEVANT STATUTES AND REGULATIONS:** 2 U.S.C. § 431(8)(B)(ix)
2 2 U.S.C. § 431(9)(B)(viii)
3 2 U.S.C. § 441a(a)(2)(A)
4 2 U.S.C. § 441a(a)(4)
5 2 U.S.C. § 441a(a)(7)(B)(i)
6 2 U.S.C. § 441a(d)
7 2 U.S.C. § 441a(f)
8 2 U.S.C. § 441d(a)
9 2 U.S.C. § 434(b)
10 11 C.F.R. § 110.11
11 11 C.F.R. § 100.87
12 11 C.F.R. § 100.147
13 11 C.F.R. § 106.1
14 11 C.F.R. § 109.20
15 11 C.F.R. § 109.21
16 11 C.F.R. § 109.32
17 11 C.F.R. § 109.33
18 11 C.F.R. § 109.34
19 11 C.F.R. § 109.37

20
21 **INTERNAL REPORTS CHECKED:** Disclosure Reports

22
23 **FEDERAL AGENCIES CHECKED:** None
24
25

26 **I. INTRODUCTION**

27 These two matters involve allegations concerning Tony Knowles for U.S. Senate
28 ("Knowles Committee," "Committee"), the Alaska Democratic Party ("ADP") and the Democratic
29 Senatorial Campaign Committee ("DSCC") in connection with the U.S. Senate race in Alaska in
30 2004.

31 The complaint in MUR 5564 alleges that substantial DSCC transfers to ADP were used to
32 support the Knowles candidacy through an ADP "field program" and exceeded the coordinated
33 expenditure limits set forth in the Federal Election Campaign Act of 1971, as amended ("the Act"),
34 resulting in excessive in-kind contributions from ADP to the Knowles Committee. Based on the
35 facts presented in the complaint, the responses, as well as other available information, it appears
36 that ADP coordinated substantial expenditures with the Knowles Committee in connection with

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1 the field program that exceeded ADP's coordinated expenditure limit. We therefore recommend
2 that the Commission find reason to believe that ADP made, and the Knowles Committee received,
3 excessive in-kind contributions.

4 The complaint in MUR 5575 alleges that ADP made excessive contributions to the
5 Knowles Committee by distributing mailers that promote Knowles or attack his opponent, and
6 which do not fit within the "volunteer materials" exemption of the Act. The available information
7 raises questions about the level of volunteer involvement and the source of funds for the mailers,
8 casting doubt on ADP's claim that the mailers complied with the exemption. Because it appears
9 that ADP may have coordinated the expenditures for the mailers with the Knowles Committee, we
10 recommend that the Commission find reason to believe that ADP made, and the Knowles
11 Committee received, excessive in-kind contributions.

12 The complaint in MUR 5564 also alleges that two television advertisements advocating the
13 election of Tony Knowles were paid for by DSCC and coordinated with the Knowles Committee.
14 Under the test for coordinated communications, it appears that one of the advertisements does not
15 satisfy the source requirement and the other does not satisfy the material involvement standard.
16 Accordingly, we recommend that the Commission find no reason to believe that DSCC or the
17 Knowles Committee violated the Act in connection with the television advertisements.

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II. FACTUAL & LEGAL ANALYSIS

A. Alleged Excessive Contributions from ADP to the Knowles Committee

1. ADP's 2004 Field Program (MUR 5564)

a. Facts

ADP made significant disbursements in 2004 on what it described as a "field program," which included the opening of regional offices in several communities across Alaska, as well as the hiring of numerous "summer interns." In the months leading up to the 2004 general election, these paid staffers appear to have conducted various activities out of the regional offices, such as canvassing neighborhoods promoting Tony Knowles' 2004 campaign for U.S. Senate. ADP reported a portion of program expenses as "section 441a(d)" expenditures and also received monthly reimbursements from the Knowles Committee in connection with the program. The central issue appears to be whether such amounts sufficiently covered all of the program activities undertaken by ADP on behalf of Knowles; if not, then it appears that ADP made excessive in-kind contributions to the Knowles Committee by exceeding its coordinated expenditure limit.

Complainant alleges in MUR 5564 that DSCC transferred \$1.7 million to ADP and that ADP used the money to support Knowles' candidacy, resulting in "illegal in-kind donations." Complaint at 1. Complainant acknowledges that DSCC and ADP could make coordinated expenditures on behalf of the Knowles Committee under 2 U.S.C. § 441a(d), but that such spending crossed the limits for national and state parties.³ The transferred money was allegedly spent by ADP in coordination with the Knowles Committee to open the field offices and to pay canvassers who operated as Knowles campaign workers.

³ The combined limit was \$149,240 for 2004. See 2004 Coordinated Party Expenditure Limits, The (FEC) Record, 15-16 (March 2004).

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1 The complaint attached an e-mail from the treasurer for the Knowles Committee allegedly
2 sent to Knowles "supporters." *Id.* at 2. The e-mail, dated April 16, 2004, included the subject line
3 "housing needed" along with the following text:

4 Hello friends,

5

6 We wanted to let you all know that [ADP] is organizing a summer intern program
7 here in Anchorage (and across the state). They are hiring interns to hit the streets
8 and go door-to-door to spread Tony's message and talk to voters about why they
9 should vote for him.

10 We are asking the interns (either college students or high school
11 upperclassmen) to commit to at least 6 weeks over the summer, for five hours a
12 day either 5 or 7 days a week, with the 5 hours being in the afternoon during the
13 week and during the day on the weekend. Depending on if they commit to 5 or 7
14 days, we will pay them accordingly. So if you know any interested students,
15 please send them our way. E-mail . . . oliver@alaskademocrats.org.

16 Second, although most of these interns will be from Alaska, we have had some
17 interest from students from the Outside. Since we aren't paying them much and
18 they won't be here for very long, we need places for them to live for 8-8 weeks.
19 If anyone has a spare bed they can use to house one of these committed young
20 Democrats' [sic] please also let Oliver know.⁴

21
22 Complaint, Exhibit C.

23 The complaint also included an ADP flyer allegedly "being distributed on the campus of
24 the University of Alaska Anchorage on September 2, 2004."⁵ The flyer stated,

25 Go door to door to elect Tony Knowles! . . . [ADP] is looking for outgoing and
26 friendly people who can talk to voters at their doors about the upcoming Senate
27 election. To be eligible, you must be at least 16 years of age, a supporter of Tony
28 Knowles and available to work at least 6 hours a week. You will be paid \$10 per
29 hour. If you are interested, call Deven or Megan at 632-3214.⁶

⁴ ADP reported biweekly "Payroll" disbursements to an Oliver Gottfried from March through November 2004.

⁵ A press account referencing the flyer stated it "was posted on college campuses" by ADP. Sam Bishop, *Reports show differing party help to candidates*, FAIRBANKS (Alaska) DAILY NEWS-MINER (Oct. 9, 2004).

⁶ ADP reported "Payroll" disbursements to a Deven Nelson from April through November 2004, and to a Megan Huth from July through November 2004. We were unable to determine from public sources the listing for the phone number (it did not correspond with any of several ADP and/or Knowles campaign office numbers we have found). The complaint also included a document suggesting that Megan Huth sent a Knowles press release on September 28, 2004, using ADP's e-mail address. The release announces Knowles' debate schedule and states "Paid for by Tony Knowles For Senate." Complaint, Exhibit N. ADP responds that it disseminated the press release because "it already (Footnote continues on following page)

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1
2 Complaint, Exhibit F. Complainant asserts that "ADP is paying payroll of at least 104 different
3 people [in 2004] including Jim Messina, who was reported in the press to be Mr. Knowles'
4 campaign manager" ⁷ *Id.* at 1. Around the time of the November 2004 general election, ADP
5 was reporting "payroll" disbursements to over 400 individuals, including Messina. As discussed
6 *infra*, the Knowles Committee reported payments to Messina during the same period.

7 Complainant also submitted a copy of a web page from the Knowles Committee website
8 containing a July 23, 2004 New York Times article. Complaint, Exhibit D. The article describes
9 an encounter by "Campaign Worker" Max Hensley with a grizzly bear "[w]hile out rounding up
10 potential supporters for the Senate candidate, Tony Knowles" ⁸ Complainant claims that
11 Hensley's salary was being paid by ADP and that the Knowles Committee reported no payments to
12 him. ⁹ Complainant alleges that ADP failed to report the salaries of Hensley and other field
13 workers as in-kind contributions and that disclosure reports filed by the Knowles Committee do
14 not reflect the receipt of such in-kind contributions.

had established an effective email distribution list for local and national media outlets for its own internal use," and that the e-mail was a non-public communication that did not "add any incremental cost." ADP Response at 4.

⁷ A search of news databases uncovered articles identifying Messina as "manager" or "director" of the Knowles campaign. See, e.g., Nicole Duran, *Knowles Taps Dorgan Chief For His Race*, ROLL CALL (June 8, 2004); *Don't Make a Messina of Things*, THE HOTLINE (American Political Network), Vol. 10, No. 9 (June 8, 2004); *Senate 2004 Agenda: Lisa, Lisa!*, THE HOTLINE (American Political Network), Vol. 10, No. 9 (Aug. 25, 2004).

⁸ Although we could not locate the article in the New York Times, we found a July 23, 2004 article in The Hotline covering Hensley's bear encounter, referring to him (Hensley) as a "Tony Knowles summer canvasser." *People When Animals Attack: Gives New Meaning to "Grin and Bear It"*, THE HOTLINE (American Political Network), Vol. 10, No. 9 (July 23, 2004).

⁹ ADP reported Schedule B "Payroll" disbursements to Hensley of \$492, \$394 and \$334 on July 15, July 30, and August 13, 2004, respectively. It also reported Schedule F "Payroll" disbursements to Hensley of \$98.47 and \$83.60 on July 30 and August 13, 2004, respectively. Although the Knowles Committee does not appear to have reported any disbursements to Hensley, as discussed *infra*, it reported large monthly disbursements to ADP for such items as "Reimbursement for staff salaries."

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1 A review of news databases indicates that other individuals on ADP's payroll were
2 reportedly engaging in campaign activity on behalf of Knowles. For example, a July 2004 news
3 account describes the daily activities of two "Knowles workers" paid by ADP.¹⁰

4 At the Knowles campaign, the workers are more conventionally used as door-to-
5 door canvassers. "Shoe leather is essential for any campaign," Knowles
6 spokesman Bob King said. . . .

7 The Knowles workers start their day at campaign headquarters, where they
8 receive walking assignments for the day. Then they go out and spend the day
9 canvassing at Anchorage doorsteps.

10 In South Anchorage, a middle-aged woman peers through her screen door at
11 [Marissa] Coughlin, who delivers her endorsement of Knowles in a series of
12 gulps, starts and factoids. . . .

13 "Are you a supporter of Governor Knowles?" asked Coughlin

14
15 Down the block, Coughlin's canvassing partner, [Caitlin] Legacki, approached
16 another door. A man appeared at the upstairs window, and Legacki identified
17 herself as a Knowles campaign worker.

18
19 Following a brief conversation with Legacki, [the man's wife] pledged to support
20 Knowles in the election.¹¹

21
22 A graphic for the article states that Coughlin and three other ADP workers "go
23 over walk routes as they canvass a neighborhood with Tony Knowles' campaign
24 literature."¹² In another article, Legacki reportedly "stated that she [was] one of 31
25 canvassers employed by [ADP] to go door-to-door promoting Knowles."¹³

¹⁰ ADP's disclosure reports show biweekly "Payroll" disbursements in the summer and fall of 2004 to persons identified in the article. Although the Knowles Committee does not appear to have reported any disbursements to these individuals, as discussed *infra*, it reported large monthly disbursements to ADP for such items as "Reimbursement for staff salaries."

¹¹ Kevin Boots, *Campaign Kids; Young Workers Build Signs, Knock on Doors for Murkowski, Knowles*, ANCHORAGE DAILY (July 16, 2004).

¹² *Id.*

¹³ Liz Ruskin, *Candidates Battle Over 'Outside Activists'*, ANCHORAGE DAILY (June 23, 2004).

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Complainant avers that the Knowles Committee website contains further information demonstrating coordination of expenditures between ADP and the Committee. The complaint included a copy of a Knowles campaign web page "from April of 2004" that states:

The Alaska Democratic Party opened regional offices in Anchorage, Fairbanks, Juneau, Wasilla, and Soldotna in the past few weeks and more field offices will soon open in Barrow, Bethel, Nome, Kotzebue, Kodiak, Valdez, Sitka and Ketchikan. Local supporters will be joined by experienced field staffers in conducting voter registration and outreach to build grassroots support for Knowles [sic] candidacy heading up to election day.

Complaint, Exhibit B (emphasis in original). An archived web page from the Knowles website from November 2004 lists sixteen operational ADP "Coordinated Campaign Field Offices," including most of the office locations listed above as well as offices in Kenai, Eagle River, Homer and Seward.¹⁴

The Knowles Committee website refers to the ADP offices as "Knowles Offices" and includes links for each of the listed offices, advising the viewer, "To contact an office in your area, please click on one of these regional offices run by the Alaska Democratic Party."¹⁵ The web pages for these offices contain contact information (e.g., individuals to contact at each office, office addresses and phone numbers) and various references to Knowles' candidacy; there are no references to other candidates. For example, the web page for the "Kenai Office" states, "We are here to talk to people on the Peninsula about Tony Knowles and his plan to put Alaska first in the U.S. Senate. Stop by our office anytime to learn more about Tony or to find out how you can help

¹⁴ See <http://web.archive.org/web/20050712114765/http://www.tonyknowles.com/rural_offices.html?PHPSESSID=ce8bd9bbb0382967f6a7425af04094bc>. The "Kenai Office" is located in Soldotna, Alaska; it may be the same office called the "Soldotna" office in Exhibit B of the Complaint. Also, the "Anchorage Office" listed in the website has a different address and phone number than office listed as ADP headquarters on ADP's website in 2004. See, e.g., <<http://web.archive.org/web/20040205201033/alaskademocrats.org/contact.html>>.

¹⁵ See <http://web.archive.org/web/20050719055755/http://www.tonyknowles.com/office_locations.html?PHPSESSID=ce8bd9bbb0382967f6a7425af04094bc>.

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1 get Tony elected."¹⁶ A photograph of the office posted on the web page shows the outside window
2 covered with "Knowles for Senate" posters; no other candidates are listed. ADP's website from
3 the same time period does not reference any of these regional party offices; it included information
4 only for its Anchorage headquarters.¹⁷

5 It appears that all of the regional offices may have shut down shortly after the
6 November 2004 election. ADP's disclosure reports do not appear to show any rent, utilities or
7 other costs related to these offices after 2004; in addition, it appears that, within one month
8 following the election, the individuals listed as office contacts were no longer employed by ADP.¹⁸

9 ADP and the Knowles Committee admit that ADP solicited students and opened regional
10 offices in 2004 in an effort to elect Knowles, but claim ADP's "field program" benefited the entire
11 Democratic ticket and was not carried out exclusively for Knowles' benefit. ADP Response at 2;
12 Knowles Committee Response at 2-3. The Knowles Committee states that three federal candidates
13 appeared on the ballot as well as "a number of Democrats . . . in state and local elections. . . . ADP
14 undertook its program to benefit all these candidates." Knowles Committee Response at 2.

15 ADP describes the field program as follows:

16 The overwhelming majority of the activities undertaken by over 150 field
17 organizers were, in fact, 1) door-to-door voter registration, voter identification, and
18 material distribution; 2) volunteer recruitment on behalf of the party, including
19 recruiting for precinct captains and election-day poll watchers; 3) phone voter
20 identification programs and persuasion calls; 4) encouraging voters to vote by
21 absentee ballot [both door-to-door and over the phone]; and 5) meeting with
22 legislative candidates/campaigns and party officials to enlist their participation in
23 all of the aforementioned activities.

24
25 ADP Response at 3-4.

¹⁶ See <http://web.archive.org/web/20040719055755/http://www.tonyknowles.com/office_locations.html?affiliates=&PHPSESSID=2f9bbb0382967f6a7425af04094bc>.

¹⁷ See <<http://web.archive.org/web/20041013003409/http://www.alaskademocrats.org>>.

¹⁸ None of the regional offices are currently listed in Directory Assistance.

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1 Early in the election cycle, based on a "good faith estimate," ADP decided to allocate 20%
2 of field program expenses to the Knowles campaign. ADP Response at 2, Knowles Committee
3 Response at 3. ADP claims the other 80% of staff time was spent undertaking "generic activity."
4 ADP Response at 2. ADP's Executive Director states in a declaration that ADP allocated "20% of
5 all aspects of the field program, including payroll, rent, utilities, phone bills, and other office
6 operating expenses." Declaration of Bridget T. Gallagher, dated Dec. 8, 2004, at ¶ 4. ADP
7 allocated "a portion of each month's costs . . . of its field program to either its 441a(d) authority"
8 or was "timely reimbursed for an applicable portion" by the Knowles Committee.¹⁹ *Id.* at ¶ 5.
9 ADP's Executive Director claims that she "developed and oversaw the ADP field operation," that
10 no field workers were "supervised directly" by the Knowles campaign, and that ADP ultimately
11 allocated \$473,683.63 either to its coordinated expenditure limit or as reimbursements received by
12 ADP from the Knowles campaign. *Id.* at ¶¶ 2, 5-6. ADP did not provide any breakdown
13 explaining how it arrived at that figure; however, ADP's 2004 disclosure reports show \$134,161 in
14 total coordinated expenditures on behalf of Knowles from April through September 2004, and an
15 additional \$340,264 in reimbursements from the Knowles Committee from April through

¹⁹ ADP appended the following statement to its May, August, September and Pre-General monthly reports for 2004:

The monies received by the Alaska Democratic Party from the Knowles for Senate campaign reflect reimbursement for staff salaries and other office expenses for a portion of the ADP's field program a portion of which has been determined to be directly on behalf of and therefore allocable to Tony Knowles for Senate. See 11 C.F.R. / 106.1. The amount allocated to the Knowles for Senate campaign reflects a determined percentage of staff salaries as well as other office expenses such as rent and office supplies for the portion of the field staff's time spent working directly for the Knowles campaign. The Knowles campaign intends to pay for a portion of these activities on a regular basis. The amount paid over and above the amount each month by the ADP for these activities will be disclosed as a coordinated expenditure on behalf of the Knowles for Senate campaign pursuant to 2 U.S.C. / 441a(d) by the ADP on Line 25 of its monthly reports.

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November 2004, for such items as "staff salaries" and "office rent."²⁰ The sum of these two figures, \$474,425, is close to the allocated amount of 20% claimed by ADP's Executive Director.

Respondents assert that since the Knowles Committee paid "a share of . . . ADP's expenses and of staff salaries, it was not inappropriate to refer to" ADP's offices as "Knowles Offices," or to an ADP staffer "as a Knowles worker." Knowles Committee Response at 2; *see also* ADP Response at 2. "Moreover, to attract momentum and constituent support, the Knowles campaign often emphasized in its press those [ADP] activities . . . that directly supported Gov. Knowles." Knowles Committee Response at 2. The Committee notes that party committees "frequently use the most recognized candidates at the top of their tickets as a 'draw' for a host of purposes, including fundraising and recruitment of volunteers." *Id.*

ADP contends that a significant portion of the field program was comprised of a "canvass component that employed part-time staff whose *sole* activity was going door to door in urban

²⁰ The following data show ADP's receipts from the Knowles Committee:

Amount	Reported by Knowles	Description by Knowles	Reported by ADP	Description by ADP
12,500.00	04/08/04	Reimbursement for staff salaries	04/07/04	reim. for staff salary
12,500.00	05/01/04	Reimbursement for staff salaries	05/03/04	reim. for staff salary
12,500.00	06/01/04	Reim. for staff salaries	06/07/04	reim. for staff salary
25,000.00	07/01/04	Reimbursement for staff salaries	07/07/04	reimb. for staff salaries
35,202.00	08/07/04	Reimburse shared costs	08/11/04	share of salary expenses
20,030.18	09/01/04	Reimburse percent salaries office costs	09/09/04	staff sal./travel/polling
44,750.00	10/13/04	Percent allocated directly to campaign	10/13/04	staff salary and office rent
30,000.00	11/01/04	Reimbursement for Salary & shared Costs	11/02/04	pmt. for rent/salaries
145,000.00	11/05/04	Reimburse share of operating costs	11/09/04	pmt. for salary and rent
2,782.20	11/23/04	Reimburse share of operating costs	11/24/04	GOTV salaries

\$340,264.38 Total

In 2005, ADP reported receiving a \$12,469.50 in-kind contribution from the Knowles Committee on March 1, 2005, for "staff travel in October 2004," which may be related to a Knowles Committee disbursement in the same amount to Budget Rental Car for "Vehicle Rental," reported on February 28, 2005. ADP also reported receiving \$72,800 (no description) from the Knowles Committee on May 25, 2005; the Knowles Committee reported a \$72,800 disbursement to ADP on May 26, 2005, describing it as a "Transfer to State Party Federal Committee." The Knowles Committee has not reported any other disbursements to ADP in 2005.

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1 communities to register voters, sign them up for absentee ballots, and/or identify them." ADP
2 Response at 4 (emphasis in original). "Any voter identification information gleaned from these
3 activities was the sole property of the ADP and was not provided to the Knowles campaign for its
4 own use." *Id.* ADP asserts that the "phone activities undertaken by the field employees" were the
5 "only public communication(s) in which these employees engaged in" and "reflected a small
6 percentage of their time on any given day and, in many cases, were generic in nature." *Id.* ADP
7 claims that its decision to allocate 20% of field program costs was "an overly conservative reading
8 of the current campaign finance laws" because "the only activity that would require any allocation
9 to the Knowles campaign would be that portion of the phone calls that persuaded voters to vote for
10 or against the Knowles campaign." *Id.*

11 **b. Analysis**²¹

12 Pursuant to the party expenditure limits set forth at 2 U.S.C. § 441a(d), ADP's maximum
13 general election coordinated expenditure limit on behalf of the U.S. Senate candidacy of
14 Tony Knowles was \$74,620.²² Based on its disclosure reports, ADP appears to have reached that
15 limit on or around July 30, 2004. During the period from July 30 through September 30, 2004,
16 ADP reported an additional \$59,541 in coordinated expenditures on behalf of Knowles. Pursuant
17 to 11 C.F.R. § 109.33(a), ADP could have made additional coordinated expenditures as long as the
18 Democratic National Committee ("DNC") properly assigned it some portion of DNC's own
19 coordinated expenditure limit of \$74,620. However, since all the ADP filings at issue specifically

²¹ This analysis focuses only on the field program involvement of ADP and the Knowles Committee. Although the complaint includes allegations with respect to DSCC concerning television advertisements (discussed *infra* at section II.A.2), it does not appear to specifically allege that DSCC's "donation" of \$1,700,000 to ADP to open field offices was an illegal transfer. Complaint at 1. Accordingly, this analysis does not address DSCC's involvement or lack thereof in the field program. In any case, DSCC was permitted to make unlimited transfers to ADP pursuant to 2 U.S.C. § 441a(a)(4).

²² See 11 C.F.R. § 109.32(b); The (FEC) Record, 15-16 (March 2004).

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1 indicate that ADP had not "been designated to make coordinated expenditures by a political party
2 committee," and the responses do not state otherwise, it would appear that ADP exceeded its
3 coordinated expenditure limit by \$59,541.

4 ADP reported \$1,713 in general election contributions to the Knowles Committee, \$3,287
5 short of its \$5,000 limit. See 2 U.S.C. § 441a(a)(2)(A). Accordingly, based solely on ADP's
6 disclosure reports, it may have made \$56,254 (\$59,541 - \$3,287) in excessive in-kind contributions
7 in the form of coordinated expenditures on behalf of the Knowles Committee in connection with
8 the 2004 field program.

9 Although ADP does not provide a total cost figure for its field program, based on its claim
10 that the Knowles Committee's share was 20% or \$473,683.63, total program costs would have
11 amounted to \$2,368,418. The key issues concerning the allegations involving the field program
12 are whether ADP's 20% figure (or \$473,683.63) represents an accurate allocation of the Knowles
13 Committee's share of costs, and whether the Knowles Committee accepted in-kind contributions
14 that were not properly reimbursed.

15 The Commission regulations provide that expenditures made on behalf of federal
16 candidates shall be attributed "according to the benefit reasonably expected to be derived."
17 11 C.F.R. § 106.1(a)(1). For example, in the case of a phone bank, "the attribution shall be
18 determined by the number of questions or statements devoted to each candidate as compared to the
19 total number of questions or statements devoted to all candidates."²³ *Id.* Expenditures for rent,
20 personnel, voter registration and get-out-the-vote drives "need not be attributed to individual

²³ If a phone bank communication referring to a federal candidate included "another reference that generically refers to other candidates of the Federal candidate's party without clearly identifying them," then fifty percent of the disbursement is attributed to the candidate, provided that certain other conditions are met. 11 C.F.R. § 106.8.

1 candidates, unless these expenditures are made on behalf of a clearly identified candidate, and the
2 expenditure can be directly attributed to that candidate." 11 C.F.R. § 106.1(c)(1).

3 The available information suggests that more than 20% of ADP's field program
4 disbursements may have constituted expenditures that were directly attributable to Knowles and
5 should have been allocated accordingly. First, perhaps most tellingly, it would seem unlikely that
6 Jim Messina, who appears to have served as Knowles' campaign manager, would have been
7 spending more of his time working for ADP than the Knowles Committee; yet during much of the
8 relevant time the majority of his salary was being paid for by ADP.²⁴

9 Second, ADP's field offices appear to be party offices in name only, having been set up
10 primarily to serve Knowles, as indicated by the fact that the contact information for several offices
11 across the state appeared only on Knowles' website. Based on a review of archived web pages, no
12 references to regional ADP offices appeared on ADP's website during 2004, even though ADP
13 appears to have been paying for 80% of the rent and utilities. All nineteen individuals listed on

²⁴ ADP reported \$20,162 in "Payroll" disbursements to Messina as follows: \$2,356 on 7/15/04, \$2,356 on 7/30/04, \$2,356 on 8/13/04, \$2,356 on 8/31/04, \$2,356 on 9/15/04, \$2,356 on 9/30/04, \$2,367 on 10/15/04, \$2,373 on 11/3/04 and \$1,286 on 11/09/04. The Knowles Committee reported \$32,042 in "Salary" disbursements to Messina as follows: \$2,337 on 6/16/04, \$2,200 on 7/2/04, \$2,200 on 7/16/04, \$2,200 on 7/30/04, \$2,200 on 8/13/04, 2,200 on 8/27/04, \$2,200 on 9/10/04, \$2,200 on 9/24/04, \$2,201 on 10/8/04, \$2,215 on 10/22/04, \$7,674 on 11/05/04 and \$2,215 on 11/5/04.

An article in Roll Call provided further detail regarding Messina's role:

Jim Messina has taken a leave of absence from his position as chief of staff to Sen. Byron Dorgan (D-N.D.) to serve as Knowles' Senate campaign director.

Messina joins longtime Knowles aide [and treasurer] Leslie Riddle in overseeing the Democrat's effort to unseat Sen. Lisa Murkowski (R).

In an acknowledgement to how tight the race is expected to be – and the pivotal role it could play in determining which party controls the Senate – Dorgan was willing to let his chief head out to the Last Frontier, said an informed source.

....

"This is going to be an extraordinarily close race and we are very excited to have Jim here helping out," added Matt McKenna, spokesman for Knowles.

....

As campaign director, Messina will "lead his expertise to every facet of this campaign," McKenna said.

Nicole Duran, *Knowles Taps Dorgan Chief For His Race*, ROLL CALL (June 8, 2004).

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1 Knowles' website as contacts for the regional offices were on ADP's payroll, yet the information
2 below these names referenced only the Knowles campaign and included no references to the party
3 or to other candidates (e.g., "stop by our office anytime to learn more about Tony or to find out
4 how you can help get Tony elected").²⁵ Despite ADP's assertion that the "field operation was . . .
5 designed to . . . build the party's permanent field operations for future elections," *see* ADP
6 Response at 2, all of the regional ADP offices appear to have shut down shortly after the
7 November 2014 election, following Knowles' defeat. Given these circumstances, it would appear
8 that the regional offices were set up mainly to support Knowles' candidacy, and that ADP should
9 have attributed their costs (rent, utilities, etc.) accordingly.

10 Third, regarding what is likely the largest share of program costs – staff salaries – it
11 appears that the field workers on ADP's payroll were functioning primarily as Knowles campaign
12 workers. As described *supra*, the treasurer of the Knowles Committee appears to have informed
13 supporters that ADP workers would be going door-to-door "to spread Tony's message" and asked
14 them to provide housing for the workers. Also, the recruitment flyer apparently created by ADP
15 reiterated the Committee treasurer's message about workers going "door to door to elect Tony
16 Knowles!" Although we have no information regarding the content of Knowles campaign
17 literature that may have been distributed by ADP workers or scripts that may have been used for
18 phone bank communications or door-to-door canvassing, news accounts suggest that the Knowles
19 Committee was the main beneficiary of the workers' activities.

20 Although Respondents generally describe the component activities of the field program,
21 they provide little detail supporting their position that each of these activities was primarily generic

²⁵ See <http://web.archive.org/web/20150719055755/http://www.tonyknowles.com/office_locations.html?office=Kenai&PHPSESSID=ce8bd9bbb0382967f6a7425af04094bc>.

1 in nature, or that the field program benefited other candidates. In reviewing the available
2 information (e.g., ADP recruiting flyers, photos of ADP offices, statements reportedly made by
3 ADP workers) we have found no references to any other candidates, whether federal or non-
4 federal.²⁶ Other than the unexplained reference in ADP's response to meetings with unnamed
5 "legislative candidates/campaigns," which it claims was part of its field program activities, there is
6 little information indicating that the program was aimed at benefiting any candidate other than
7 Knowles. Accordingly, it would appear that the 20% attribution figure used by ADP in connection
8 with its field program expenses was disproportionate to the benefit received by Knowles. See
9 11 C.F.R. § 106.1(a)(1).

10 If the expenditures exceeding ADP's combined section 441a(d) and 441a(a)(2)(A) limits
11 were made "in cooperation, consultation, or concert, with, or at the request or suggestion of" the
12 Knowles Committee or its agents, an excessive in-kind contribution would result. See 2 U.S.C.
13 § 441a(a)(7)(B)(i); 11 C.F.R. § 109.20(a) and (b). For those activities that might be deemed
14 communications (e.g., ADP's telephone calls, see 11 C.F.R. § 100.28), the Commission has
15 promulgated separate regulations addressing "party coordinated communications." See 11 C.F.R.
16 § 109.37.²⁷

17 Although it is not clear at this time which ADP field program disbursements should be
18 considered party coordinated communications under 11 C.F.R. § 109.37, and which disbursements

²⁶ Also, in contrast with the substantial party coordinated expenditures on behalf of Knowles as reported by ADP and DSCC, it does not appear that any such expenditures were made on behalf of ADP's Democratic nominee for the U.S. House of Representatives, Thomas Higgins (ADP reported no independent expenditures in 2004).

²⁷ A party communication is coordinated with a candidate, an authorized committee or agent thereof if it meets a three-part test: (1) the communication is paid for by a political party committee or its agent; (2) the communication satisfies at least one of the "content" standards described in Section 109.37(a)(2); and (3) the communication satisfies at least one of the six "disbursement" standards described in Section 109.21(d). In *Shays v. FEC*, 414 F.3d 76, 102 (D.C. Cir. July 15, 2006) (pet. for rehearing en banc denied Oct. 21, 2005), the appeals court affirmed a district court decision that invalidated the content standard of the coordinated communications regulation. The regulation remains in force pending the Commission's promulgation of a new regulation. *Shays v. FEC*, 240 F. Supp. 2d 39, 41 (D.D.C. 2004).

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1 for activities that are not public communications should be treated as coordinated expenditures
2 under 11 C.F.R. § 109.20, the available information suggests that some degree of cooperation or
3 consultation may have occurred. Despite the assertions of ADP's Executive Director that she
4 developed and oversaw the program and that "no field staff member was supervised directly by"
5 the Knowles campaign, there remain questions as to the role and involvement of Knowles'
6 campaign manager, who appears to have been receiving most of his salary from ADP while the
7 field program was fully operational in the summer and fall of 2004. In addition, the content of the
8 e-mail sent by the treasurer of the Knowles Committee, *see supra* at 5, suggests that she may have
9 coordinated some aspects of ADP's field program, such as mobilizing potential workers. For
10 example, the treasurer states that "we are asking" interns to work for ADP over the summer, and
11 that if the recipients "know any interested students, please send them our way." Another ADP
12 worker – listed as a contact on an ADP flyer recruiting "supporters of Tony Knowles" to work on
13 the field program – appears to have used her <alaskademocrats.org> e-mail account to send out a
14 Knowles campaign press release. *See supra* fn. 6. Finally, there is no information concerning how
15 ADP may have attempted to ensure the independence of unreimbursed expenditures benefiting the
16 Knowles campaign. For example, it is not clear whether activities on behalf of Knowles were
17 assigned to some staff but not others, or whether particular ADP office equipment or space was
18 designated for use solely by the campaign.

19 Because questions remain concerning ADP's field program and the nature and
20 extent of the Knowles Committee's involvement, we believe an investigation is warranted
21 in this matter. Accordingly, based on the information indicating that ADP exceeded its
22 coordinated expenditure limit and may have made excessive in-kind contributions without
23 properly reporting them, we recommend that the Commission find reason to believe that

1 the Alaska Democratic Party and Marge Kaiser, in her official capacity as treasurer,
2 violated 2 U.S.C. §§ 441a(a)(2)(A), 441a(d), 441a(f) and 434(b) in connection with the
3 allegations concerning ADP's 2004 field program. Regarding the receipt of possible
4 excessive in-kind contributions and the failure to report them, we recommend that the
5 Commission find reason to believe that Tony Knowles for U.S. Senate and Leslie Ridle, in
6 her official capacity as treasurer, violated 2 U.S.C. §§ 441a(f) and 434(b) in connection
7 with the allegations concerning ADP's 2004 field program.

8 **2. ADP Mailers (MUR 5575)**

9 **a. Facts**

10 Complainant alleges in MUR 5575 that ADP made "illegal coordinated
11 communications" to benefit the Knowles campaign in the form of "mailers being sent by
12 the ADP to thousands of residents in Alaska." Complaint at 1. Complainant alleges that
13 ADP had "already" exceeded its limits for party coordinated expenditures by spending over
14 \$1.5 million by opening "joint offices" and "hiring staff to go door to door to help elect"
15 Knowles. *Id.*

16 Complainant submitted copies of three mailers allegedly paid for by ADP. One
17 mailer consists of two pages and includes critical remarks about Lisa Murkowski's
18 congressional votes on health care benefits for veterans and reservists, stating in large type,
19 "Lisa Murkowski Has Turned Her Back On Those Who Served." Complaint Att. at 1-2.
20 The first page of the second mailer states, "Tony Knowles – A Strong, Independent And
21 Effective Leader, Creating Jobs For Alaska Families." *Id.* at 3. The next three pages
22 include favorable comments and news accounts regarding Knowles' efforts to create or
23 save jobs in Alaska. *Id.* at 5-6. The final mailer states on the first page, "On The Issue Of

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1 Health Care For Alaskans, There Are Real Differences Between Tony Knowles And Lisa
2 Murkowski." *Id.* at 7. The next three pages comment favorably on Knowles' positions on
3 drugs and health care while negatively portraying Murkowski's positions. *Id.* at 8-10. The
4 mailer includes three photographs of Knowles as well as a quote attributed to him.

5 Complainant asserts that no portion of the mailings was done by volunteers; they
6 were "not hand addressed, the postage was not affixed by hand and the material was not
7 placed in an envelope by volunteers." Complaint at 1. All the mailings attached to the
8 complaint state that they were paid for by ADP and contain a Nonprofit Organization
9 mailing permit. Complainant alleges that the mailers are also in violation of the Act's
10 disclaimer requirements, since they do not state whether they were authorized by any
11 candidate or candidate's authorized committee.

12 ADP responds that the mailers were part of an exempt mail program conducted
13 between October 7 and 29, 2004, and that each mailer attached to the complaint was
14 "handled in a significant manner by volunteers" at the "mail facility" of the printing
15 vendor, North Mail, Inc. ADP Response at 1-2. ADP submitted a declaration from
16 Terry Horton, who claims she "served as a volunteer" for ADP and "was responsible for
17 recruiting for and providing the ADP with volunteers to assist in the production of mailings
18 undertaken by the ADP on behalf of" Knowles. Declaration of Terry Horton, dated Dec. 7,
19 2004, ¶¶ 1-2. Horton states that

20 Volunteers operated a machine that laser printed the addresses onto each
21 mail piece. As each piece came off the machines, they were bundled by
22 volunteers into batches by rubberband and sorted into trays and boxes.
23 The volunteers then placed the proper zip code labels on the boxes and
24 trays and tagged them as priority/political mail. In the case of rural mail,
25 the mail pieces were placed into mail bags rather than boxes or trays and
26 tagged as priority/political mail by volunteers.
27

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Id. at ¶ 4.

The Knowles Committee contends that volunteers did not stuff envelopes "because there were no envelopes to stuff; the materials were merely folded, not placed in envelopes. Volunteers did not place postage, because [ADP's] bulk mail permit was used." Knowles Committee Response at 2. Respondents "did all they could to ensure that volunteers would distribute the materials, including requesting that the participation of volunteers be documented with photographs." *Id.* ADP provided a compact disk containing seventy-one photographs dated from October 10 to 19, 2004. Several individuals are depicted in what appears to be a commercial facility, engaging in such activities as guiding mailers through addressing machines and bundling and labeling boxes and bags of mail.

b. Analysis

The Act defines "contribution" and "expenditure" so as to exclude payments by a state committee of a political party for the costs of campaign materials. *See* 2 U.S.C. § 431(8)(B)(ix) and (9)(B)(viii). Payments qualifying for this volunteer exemption are therefore not subject to the Act's limits on a state party committee's contributions or expenditures. To qualify for this exemption, the payments must be "used by such committee in connection with volunteer activities on behalf of nominees of such party." *Id.*

The regulations implementing the volunteer exemption establish that the exemption does not apply to "direct mail," defined as "any mailing(s) by a commercial vendor or any mailing(s) made from commercial lists." 11 C.F.R. §§ 100.87(a) and 100.147(a). Materials must be "distributed by volunteers and not by commercial or for-profit operations." 11 C.F.R. §§ 100.87(d) and 100.147(d). In matters involving mailings where a state party committee has claimed that such disbursements did not constitute contributions or expenditures under the Act, the

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Commission has focused on whether a volunteer effort, rather than a commercial mailing house or other vendor, was responsible for preparing the mailings and delivering them to the post office.

For example, in MUR 4851 (Michigan Republican State Committee), the Commission took no further action regarding a state party committee after it presented evidence that volunteers affixed postal indicia (i.e., postage mark with permit number) on each piece of mail, placed address labels on them, and took them to the post office for distribution. Likewise, in MUR 4471 (Montana State Democratic Central Committee), where a commercial vendor printed and mailed brochures that were sorted, bundled and delivered to the post office by volunteers, the Commission concluded that volunteers were sufficiently involved. See Statement of Reasons, MUR 4471, Nov. 19, 1998, at 5. Finally, in MUR 3218 (Blackwell for Congress), the Commission stated that the exemption was satisfied when volunteers opened the cartons for printed direct mail materials and "stamped on each piece, individually, the return address and the bulk mail permit indicia" and "sorted the pieces into the requisite postal/zip code categories and transported the Mailings to the Postal Service, where they were mailed." See Statement of Reasons, MUR 3218, May 23, 1991, at 3. See also MUR 2377 (Republican Party of Texas) (volunteer materials exemption applies where volunteers unpackaged, labeled, sorted, bundled, and delivered the mailers to the post office).

However, the Commission has concluded in other state party matters that volunteers were not sufficiently involved in direct mail activities. For example, in MUR 2994 (Wyoming State Democratic Central Committee), the conciliation agreement stated that the mailings at issue failed to qualify for the volunteer exemption, noting that the mailings were produced by the vendor and "sent directly from the production house" to the post office; the only volunteer involvement with the mailers was reviewing the mailing lists and inserting the county for each address. See

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1 Conciliation Agreement, MUR 2994, dated Jan. 14, 1991. Also, in MUR 2559 (Oregon
2 Republican Party), the conciliation agreement stated that, "[a]lthough volunteers stamped the
3 postal indicia on one particular mailing, these particular brochures were sent back to the vendor for
4 mailing. . . . The other . . . mailings were also mailed by the vendor." See Conciliation Agreement,
5 MUR 2559, dated March 1, 1991. Finally, in MUR 4754 (Republican Campaign Committee of
6 New Mexico), the Commission determined that additional information was needed to assess
7 whether the state party committee satisfied the conditions for the volunteer materials exemption.
8 In that case, the state party committee merely submitted copies of volunteer sign-in sheets to
9 support its claim that volunteers "unloaded the mail at party headquarters . . . stamped the party's
10 non-profit indicia" on the mailers, "bundle[d] the mail . . . and took the mail to the U.S. Post
11 Office, where the volunteers unloaded the mail." MUR 4754 First General Counsel's Report dated
12 Dec. 1, 1999, at 10. The Commission found there was insufficient information to determine that
13 the exemption applied because "the party's response [did] not state one way or the other whether
14 sorting was performed by the volunteers, or the vendor." *Id.* at 11. After the state party committee
15 provided answers to interrogatories and documents indicating that volunteers bundled and sorted
16 the brochures by zip code, that the committee had sufficient funds from non-national committee
17 sources to pay for the mailers, and that the mailing list was not purchased from a commercial
18 vendor, the Commission took no further action and closed the file.

19 The cases discussed above suggest that a commercial vendor may print and fold the
20 materials, but only volunteers may perform such tasks as sorting and delivering the materials to the
21 post office for mailing. In this matter, it appears that ADP volunteers operated directly out of the
22 mail facilities of North Mail, Inc. While the available information suggests that volunteers printed
23 addresses on the mailers and sorted and bundled them, it is not clear who actually delivered them

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1 to the post office. Respondents do not address this issue, and although some of the photographs
2 supplied by ADP appear to show boxes or bundles of mailers near a loading dock, there is no
3 information pertaining to actual delivery.

4 In addition to requiring substantial volunteer involvement, the Commission's regulations
5 provide that materials purchased with funds donated by a national party committee do not qualify
6 for the volunteer exemption. See 11 C.F.R. §§ 100.87(g) and 100.147(g). Although Respondents
7 identify North Mail, Inc. as the printing vendor for the mailers at issue, they do not state, and it is
8 unclear from ADP's disclosure reports, how much was spent on the mailers and when such
9 disbursements were made.²⁸ Since over three-quarters of ADP's federal receipts in 2004 were in
10 the form of transfers from national party committees, it is appropriate to inquire whether ADP had
11 sufficient funds from non-national party sources to pay for the mailers.

12 The questions addressed above need to be resolved to determine whether the mailings at
13 issue are covered by the volunteer material exemption. If the mailers are not covered, then they
14 could be considered excessive coordinated expenditures on behalf of the Knowles Committee if
15 they constituted party coordinated communications. Although there is no information available
16 indicating how many of each mailer was sent out, the responses' references to "bulk mail trays,"
17 ADP's "bulk mail permit" and the volume of mailings depicted in the photographs indicate they
18 constituted a "mass mailing" under 11 C.F.R. § 100.27, and therefore a public communication

²⁸ ADP's 2004 Year-End Report did not disclose any disbursements to North Mail, Inc. during the reporting period covering October 2004, when it claims it operated its exempt mail program. ADP disclosed the following disbursements to North Mail, Inc. prior to October 2004: \$143.32 and \$1,031.64 for mailing and printing on June 23, 2004; \$690.07 for mailing on March 15, 2004, and \$398.23 for mailing on August 4, 2004. However, ADP reported various disbursements in 2005 that may be connected to the mailers at issue, e.g., a \$3,788 payment to North Mail on June 1, 2005 for "printing and postage during Oct. 04." Also, ADP reported significant disbursements to other vendors for "mailing" that may be related to its exempt expenditures program, e.g., \$260,000 and \$56,595 to "AMS Communications, Inc." on October 21 and 28, 2004, respectively.

1 under 11 C.F.R. § 100.26. Accordingly, the party coordinated communication criteria at 11 C.F.R.
2 § 109.37 must be applied to the mailers to determine their treatment under the Act.

3 The mailers were paid for by a party committee, refer to clearly identified federal
4 candidates, and appear to have been mailed to Alaska residents within 120 days of the general
5 election. See 11 C.F.R. § 109.37(a)(1) and (2)(iii). Regarding the applicable conduct standards at
6 section 109.21(d), it would appear that an investigation is warranted in light of the fact that the
7 mailings were sent out shortly after ADP reported coordinated expenditures on behalf of Knowles;
8 the mailers included photographs of Knowles and one contained a lengthy quote attributed to
9 him²⁹; ADP and the Knowles Committee do not deny the complaint's allegations that the mailings
10 were coordinated; and ADP may have been coordinating other expenditures with the Knowles
11 Committee during the same time frame, as discussed in the analysis of ADP's field program.

12 Because ADP had already exhausted its coordinated expenditure limit and as a result
13 exceeded its remaining general election contribution limit, we recommend that the Commission
14 find reason to believe that the Alaska Democratic Party and Marge Kaiser, in her official capacity
15 as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A), 441a(d) and 441a(f). Regarding the receipt of
16 possible excessive in-kind contributions represented by the mailers, we recommend that the
17 Commission find reason to believe that Tony Knowles for U.S. Senate and Leslie Riide, in her
18 official capacity as treasurer, violated 2 U.S.C. § 441a(f).

19 Whether or not the mailers were coordinated with the Knowles Committee, if they
20 were not covered by the volunteer exemption, ADP may have violated the Act's disclaimer
21 requirements. The disclaimers on the mailers do not state whether the communications
22 were authorized by a candidate, or any authorized committee or agent of any candidate.

²⁹ We do not know at this time how ADP obtained the photographs and quote attributed to Knowles. We could not locate the quote on Knowles' website or in news databases.

1 *See* 2 U.S.C. § 441d(a); *cf.* 11 C.F.R. § 110.11(e) (communication qualifying as an exempt
2 activity need not state whether authorized by a candidate or candidate committee).
3 Therefore, because the mailers appear to have constituted public communications paid for
4 by ADP, they were required to contain authorization information. 11 C.F.R.
5 § 110.11(a)(1), (b)(2), (b)(3). Accordingly, we recommend that the Commission find
6 reason to believe that the Alaska Democratic Party and Marge Kaiser, in her official
7 capacity as treasurer, violated 2 U.S.C. § 441d(a).

8 **B. Alleged Excessive Contributions from DSCC to the**
9 **Knowles Committee (MUR 5564)**

10
11 **1. Facts**

12 The complaint in MUR 5564 also alleges that advertisements run by DSCC were
13 similar to advertisements run by the Knowles campaign and may have been coordinated,
14 resulting in excessive contributions by DSCC.³⁰ Complainant focuses on two television
15 advertisements that, based on materials attached to the complaint, appear to have been
16 broadcast in Alaska in May and August 2004, respectively. The first advertisement,
17 according to a DSCC web page submitted with the complaint, "tells the story of how
18 Knowles served his nation, . . . opened a small business, and follows his life in public
19 service."³¹ Without providing any details, Complainant claims that photographs of
20 Knowles' family featured in the advertisement "must have been obtained from
21 Mr. Knowles or his campaign staff." *Id.* at 3. The second advertisement, according to a
22 news article attached to the complaint,

³⁰ In 2004, DSCC contributed \$35,000 to the Knowles Committee, the maximum amount prescribed at 2 U.S.C. § 441a(h). As stated *supra*, DSCC also reported making \$14,395 in general election coordinated expenditures, pursuant to assignment by DNC.

³¹ *See* <<http://www.dssc.org/news/outlineDSCC051704?>>.

1 was a spoof based on the 1939 Frank Capra movie "Mr. Smith Goes to
2 Washington," with [Lisa] Murkowski in the Jimmy Stewart role. The ad listed the
3 "producer" as Frank Murkowski, the senator's father, who appointed her after he
4 won the governorship and resigned the U.S. Senate seat in December 2002. The
5 rating was "N" for "nepotism."³²
6

7 Complaint, Exhibit J. The article quotes a news release by Knowles in which he reportedly
8 stated, "My message to the DSCC is: 'Get this ad down – now.'" *Id.* A DSCC
9 spokeswoman reportedly "said her organization complied immediately." *Id.*

10 The complaint alleges that DSCC and the Knowles Committee, in addition to
11 purchasing air time "on the largest television station in the Anchorage media market," also
12 "split their buys among the remaining markets so that all markets and major stations are
13 covered by one or the other, rather than a broad overlap of advertising on the same stations
14 in several markets." Complaint at 3. The complaint also asserts that, shortly after DSCC
15 ran television advertisements in Alaska featuring the voice of Alan Blevis, the Knowles
16 Committee "unveiled a new radio ad with Alan Blevis as the voice talent." *Id.* at 4.
17 According to Complainant, these facts suggest that "the candidate or his agents are
18 'materially involved' in decisions regarding the content of the communication, the means
19 or mode of the communication, the timing or frequency of the communication or are
20 otherwise coordinating the communications efforts." *Id.* The complaint includes other
21 instances of "close and repeated consultations and coordination," such as Knowles' alleged
22 use of DSCC facilities "for press conferences and other events in Washington, D.C.," and
23 references to the Knowles campaign on DSCC's website. *Id.* at 3, *see also* Exhibits G-H.

24 DSCC responds that it "carefully designed and implemented a program for the
25 broadcast of independent expenditures in accordance with the Commission's 'coordination'

³² Sam Bishop, *Democratic group pulls ad spoofing nepotism*, FAIRBANKS (Alaska) DAILY NEWS-MINER (Aug. 30, 2004).

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standards" DSCC Response at 2. DSCC asserts that it hired an independent consultant, Paul Johnson, to operate the program as a wholly separate entity. Johnson states in a declaration that he directed and controlled all aspects of DSCC's independent expenditure program. Declaration of Paul Johnson, dated Dec. 8, 2004, at ¶ 2. Johnson also avers that he and his staff were prohibited from contacting or receiving non-public information from the Knowles campaign, or from DSCC staff who may have been in contact with the campaign, about any aspect of its campaign strategy or political advertising. *Id.* at ¶¶ 4-6. Further, to the "best of [his] knowledge," none of his staff made any such contacts and received no such information. *Id.* at ¶ 7.

Regarding the television advertisement featuring Knowles family photographs, DSCC and the Knowles Committee both claim that it was paid for and produced by the Committee, not DSCC, and therefore could not constitute a coordinated expenditure by DSCC. As for the anti-Murkowski advertisement, although DSCC admits that it pulled the advertisement in response to Knowles' press release, DSCC and the Knowles Committee assert that Knowles' public criticism does not constitute "material involvement" as required by the Commission's coordination regulations. In his declaration, Johnson states that he "did not at any time discuss with [the Knowles Committee or its agents] the withdrawal of any DSCC advertisements from broadcast rotation," and "to the best of [his] knowledge, no member of [his] staff or agent of the DSCC's independent expenditure program had any such conversation." Johnson Declaration at ¶ 8.

Regarding the use of the same voice talent, DSCC and the Knowles Committee claim that the voice of Alan Blevis was not used in any of the Knowles Committee's

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1 advertisements. DSCC and its consultant Johnson also deny that DSCC consulted with the
2 Committee about its air time buys. *Id.* at ¶ 10.

3 **2. Analysis**

4 The complaint's allegations of coordination between DSCC and the Knowles
5 Committee appear to be sufficiently rebutted by the responses and other available
6 information. As stated *supra*, the Commission's regulations at 11 C.F.R. § 109.37 set forth
7 specific standards for determining whether a party communication is coordinated with a
8 candidate or the candidate's committee. The communication must be paid for by a party
9 committee, see 11 C.F.R. § 109.37(a)(1), and must satisfy at least one of three "content"
10 standards, one of which includes a public communication that refers to a clearly identified
11 federal candidate, is publicly disseminated 120 days or fewer before an election, and is
12 directed to voters in the candidate's jurisdiction. 11 C.F.R. § 109.37(a)(2)(iii). Pursuant to
13 11 C.F.R. § 109.37(a)(3), the communication must also satisfy at least one of six "conduct"
14 standards described in section 109.21(d).³³ The "material involvement" conduct standard
15 may be satisfied if a candidate or his or her agents becomes materially involved in
16 decisions regarding a broadcast communication's content, intended audience, means or
17 mode, specific media outlet, timing or frequency, or duration. 11 C.F.R. § 109.21(d)(2).

18 Concerning the advertisement featuring the Knowles photographs, Respondents'
19 assertions about the source of payment are supported by information on the Committee's
20 website and consistent with large media purchases reported by the Committee in May

³³ These standards are: (1) communications made at the request or suggestion of the relevant candidate or committee; (2) communications made with the material involvement of the relevant candidate or committee; (3) communications made after substantial discussion with the relevant candidate or committee; (4) specific actions of a common vendor; (5) specific actions of a former employee; and (6) specific actions relating to the dissemination of campaign material. 11 C.F.R. § 109.21(d).

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1 2004, around the time the advertisement was aired.³⁴ Accordingly, the available
2 information suggests this communication was not paid for by a third party. *See* 11 C.F.R.
3 § 109.37(a)(1).

4 The remaining communication at issue is the anti-Murkowski advertisement, which
5 appears to have been produced and paid for by DSCC, refers to a clearly identified federal
6 candidate and was apparently broadcast in Alaska within 120 days of the general election,
7 satisfying the payment and content tests set forth at 11 C.F.R. § 109.37(u)(1) and (2).

8 Although the decision to withdraw the advertisement appears to have been
9 prompted by Knowles' press release, there is no information suggesting that the Knowles
10 campaign and DSCC had any interaction or contact regarding the advertisement. In its
11 Explanation & Justification for 11 C.F.R. § 109, the Commission stated that "the 'material
12 involvement' standard would not be satisfied . . . by a speech to the general public, but is
13 satisfied by remarks addressed specifically to a select audience, some of whom
14 subsequently create, produce, or distribute public communications." *See* 68 Fed. Reg. 421,
15 434 (2003). Knowles' public comment about the advertisement would not, by itself,
16 appear to satisfy the material involvement test set forth in the Commission's regulations.
17 Other allegations of coordination in the complaint and supporting exhibits, such as
18 Knowles' alleged trips to Washington, D.C. to meet with DSCC officials, have no apparent
19 connection to the advertisement at issue and lack sufficient specificity to satisfy any of the
20 Commission's conduct standards.

³⁴ The advertisement appears to be listed on the Knowles website as a "Tony Knowles Campaign Commercial[]." *See* <http://web.archive.org/web/20041026033009/www.tonyknowles.com/video.html>. The Knowles Committee reported "Media Purchase[s]" of \$55,559.40 and \$42,660.32 on May 12 and 20, 2004, respectively.

1 The facts alleged by the Complainant and the specific factual rebuttals submitted by
2 the Respondents do not provide a sufficient basis to investigate whether the Respondents
3 may have engaged in conduct rising to the level of coordination. Given Respondents'
4 specific denials (supported by a sworn declaration) of Complainant's general coordination
5 allegations regarding the television advertisements, and in the absence of other information
6 indicating that DSCC coordinated communications or expenditures with the Knowles
7 Committee, we recommend that the Commission find no reason to believe that the
8 Democratic Senatorial Campaign Committee and J.B. Poersch, in his official capacity as
9 treasurer, violated any provision of the Act or Commission regulations in connection with
10 this matter and close the file as to them, and find no reason to believe that Tony Knowles
11 for U.S. Senate and Leslie Ridle, in her official capacity as treasurer, violated 2 U.S.C.
12 § 441a(f) in connection with the allegations concerning advertisements run by DSCC.

13 **III. PROPOSED INVESTIGATION**

14 We seek authorization to issue appropriate interrogatories, document subpoenas, and
15 deposition subpoenas to respondents and witnesses in these matters.

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IV. RECOMMENDATIONS

MUR 5564

1. Find reason to believe that the Alaska Democratic Party and Marge Kaiser, in her official capacity as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A), 441a(d), 441a(f) and 434(b).
2. Find reason to believe that Tony Knowles for U.S. Senate and Leslie Ridle, in her official capacity as treasurer, violated 2 U.S.C. §§ 441a(f) and 434(b) in connection with the allegations concerning the 2004 field program operated by the Alaska Democratic Party.
3. Find no reason to believe that Tony Knowles for U.S. Senate and Leslie Ridle, in her official capacity as treasurer, violated 2 U.S.C. § 441a(f) in connection with the allegations concerning advertisements run by the Democratic Senatorial Campaign Committee.
4. Find no reason to believe that the Democratic Senatorial Campaign Committee and J.B. Poersch, in his official capacity as treasurer, violated any provision of the Act or regulations in connection with this matter and close the file with respect to them.
5. Approve the attached Factual and Legal Analyses.
6. Authorize the use of compulsory process in this matter.
7. Approve the appropriate letters.

MUR 5575

8. Find reason to believe that the Alaska Democratic Party and Marge Kaiser, in her official capacity as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A), 441a(d) and 441a(f).
9. Find reason to believe that the Alaska Democratic Party and Marge Kaiser, in her official capacity as treasurer, violated 2 U.S.C. § 441d(a).
10. Find reason to believe that Tony Knowles for U.S. Senate and Leslie Ridle, in her official capacity as treasurer, violated 2 U.S.C. § 441a(f).
11. Approve the attached Factual and Legal Analyses.
12. Authorize the use of compulsory process in this matter.

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13. Approve the appropriate letters.

3/1/06
Date

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